

1 JOHN WALSHE MURRAY (074823)  
ROBERT A. FRANKLIN (091653)  
2 JENNY LYNN FOUNTAIN (226241)  
MURRAY & MURRAY  
3 A Professional Corporation  
19400 Stevens Creek Blvd., Suite 200  
4 Cupertino, CA 95014-2548  
Telephone: (650) 852-9000; (408) 907-9200  
5 Facsimile: (650) 852-9244  
Email: jwmurray@murraylaw.com  
6 Email: rfranklin@murraylaw.com  
Email: jlountain@murraylaw.com  
7

8 Attorneys for Debtor  
9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

|                                      |   |                          |
|--------------------------------------|---|--------------------------|
| 13 In re:                            | ) |                          |
|                                      | ) | Case No. 11-48963-EDJ-11 |
| 14 <b>ANDRONICO'S MARKETS, INC.,</b> | ) |                          |
| A California Corporation, aka        | ) | Chapter 11               |
| 15 Andronico's Community Markets,    | ) |                          |
|                                      | ) | [No Hearing Requested]   |
| 16 Debtor.                           | ) |                          |
|                                      | ) |                          |
| 17 1200 Irving Street                | ) |                          |
| San Francisco, CA 94122              | ) |                          |
|                                      | ) |                          |
| 18 Employer Tax I.D. No.: 94-1307395 | ) |                          |

19  
20 **EX PARTE APPLICATION OF DEBTOR FOR ORDER AUTHORIZING**  
**AND APPROVING EMPLOYMENT OF FINANCIAL ADVISOR**  
21 **(BAILEY, ELIZONDO & BRINKMAN, LLC)**

22 **To: THE HONORABLE EDWARD D. JELLEN, UNITED STATES BANKRUPTCY JUDGE:**

23 1. The EX PARTE APPLICATION OF DEBTOR FOR ORDER AUTHORIZING AND APPROVING  
24 EMPLOYMENT OF FINANCIAL ADVISOR (the "Application") of Andronico's Markets, Inc., a  
25 California corporation, also known as Andronico's Community Markets, the debtor and debtor in  
26 possession herein (the "Company" or the "Debtor") respectfully requests authority to employ Bailey,  
27 Elizondo & Brinkman, LLC ("BEBLLC") as its financial advisor in this case for the matters, and  
28 pursuant to the terms, set forth and described in the engagement agreement entered into

1 on or about August 18, 2011 (the “Engagement Agreement”), by and between the Debtor and  
2 BEBLLC, a true and correct copy of which is attached as **Exhibit “A”** to the DECLARATION OF  
3 WILLIAM R. BRINKMAN IN SUPPORT OF EX PARTE APPLICATION OF DEBTOR FOR ORDER  
4 AUTHORIZING AND APPROVING EMPLOYMENT OF FINANCIAL ADVISOR (“Brinkman Declaration”)  
5 filed concurrently herewith and by this reference incorporated herein. In support of this Application,  
6 the Debtor respectfully represents as follows.

7         2.         The Bankruptcy Court has jurisdiction over this Application pursuant to 28 U.S.C. §  
8 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to  
9 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought in this Application is 11  
10 U.S.C. (the “Bankruptcy Code”) § 327(a) and Federal Rule of Bankruptcy Procedure 2014.

11   **I.         SCOPE OF SERVICES**

12         3.         The Debtor is currently in need of a financial advisor to assist it in (a) a sale  
13 transaction as contemplated by the Debtor, (b) obtaining and maintaining debtor-in-possession  
14 financing from Renwood Andronico Lending 1, LLC in order to continue its business operations,  
15 and (c) the other matters set forth and described in the Engagement Agreement.

16         4.         BEBLLC has agreed to provide the following services for the Debtor:

17                 a) Advise the Company with regards to restructuring actions as the Company  
18 commences and prosecutes a case under Chapter 11 of the Bankruptcy Code, including assisting in  
19 the preparation of the petition, motions, applications, lists, schedules, statements, plans, forms or any  
20 other document or analysis reasonable and necessary as part of the Chapter 11 case;

21                 b) Market the Company, and its assets, for sale, and evaluate the Company’s  
22 strategic options including the sale or reorganization of the Company in the Chapter 11 case;

23                 c) Advise the Company and the Debtor’s Board of Directors with respect to all  
24 aspects of the restructuring of the Company;

25                 d) Advise the Company with regards to capital structure including shareholder,  
26 lender, supplier, creditor, lender and leasing contracts or agreements, as well as documentation for  
27 any other significant transaction;

28                 e) Assist in the sizing and negotiations in the debtor-in-possession financing;

1 f) Provide additional financial analysis as needed to support business decisions; and  
2 g) Meet with the Debtor's Board of Directors and other appropriate parties to review  
3 the Company's progress and clarify any issues, if necessary.

4 **II. ELIGIBILITY AND DISINTERESTEDNESS**

5 5. BEBLLC is a professional services firm that performs consulting and advisory  
6 services, specializing in bankruptcy, insolvency and reorganization matters. Accordingly, BEBLLC  
7 believes it is well qualified to represent the Debtor as its financial advisor. Attached as **Exhibit "B"**  
8 to the Brinkman Declaration, and incorporated herein by reference, are the resumes of the financial  
9 professionals of BEBLLC.

10 6. To the best of the Debtor's knowledge, information, and belief, BEBLLC is  
11 disinterested as contemplated in Section 101(14) of the Bankruptcy Code as follows:

12 a. Neither BEBLLC nor any officer, director, shareholder, associate, or  
13 employee of BEBLLC is a creditor, an equity security holder, or an "insider" of the Debtor as that  
14 term is defined in Section 101(31) of the Bankruptcy Code;

15 b. Neither BEBLLC nor any officer, director, shareholder, associate, or  
16 employee of BEBLLC was ever a director, officer, or employee of the Debtor; and

17 c. Neither BEBLLC nor any officer, director, shareholder, associate, or  
18 employee of BEBLLC has an interest materially adverse to the interest of the estate or of any class  
19 of creditors or equity security holders by reason of any direct or indirect relationship to, connection  
20 with, or interest in, the Debtor, or for any other reason.

21 7. BEBLLC has conducted its conflicts and connections review based upon lists of  
22 creditors and other parties in interest provided by the Debtor. BEBLLC represents that it does not  
23 hold or represent an interest adverse to the estate, is disinterested and, with the exception of its pre-  
24 petition retention by the Debtor and the connection as set forth below, has no connection with the  
25 Debtor, its creditors, any other party in interest, its attorneys and accountants, the United States  
26 Trustee, or any person employed in the Office of the United States Trustee:

27 a. Murray & Murray, A Professional Corporation ("Murray & Murray") is the  
28 Debtor's proposed bankruptcy counsel in the Chapter 11 case. Murray & Murray and BEBLLC

1 concurrently represented a mutual client in the 2005 – 2007 time frame in a matter wholly unrelated  
2 to the Debtor and the Chapter 11 case. BEBLLC believes that this is a “connection” only and does  
3 not create or otherwise give rise to a conflict of interest in its representation of the Debtor in the  
4 Chapter 11 case. BEBLLC believes that there are no actual or reasonably foreseeable adverse  
5 consequences to the Debtor or the bankruptcy estate by virtue of the above-mentioned connection.

### 6 **III. TERMS OF EMPLOYMENT**

7 8. The Debtor has agreed with BEBLLC, subject to this Court’s approval, that BEBLLC  
8 shall be employed on an hourly basis, as detailed below. Moreover, as set forth and described in the  
9 Engagement Agreement, upon the commencement of the Chapter 11 case, BEBLLC will have the  
10 right to move the Bankruptcy Court for an order approving an interim compensation procedure  
11 allowing the Company to pay advisory fees and costs on a monthly basis, and if such interim  
12 compensation procedure is approved by the Bankruptcy Court, such fees and costs shall be so paid  
13 within ten (10) days of the Company’s receipt of BEBLLC’s invoice. In the event that BEBLLC  
14 does not so move the Bankruptcy Court or the Bankruptcy Court does not approve such an interim  
15 compensation procedure, BEBLLC will have the right to apply to the Bankruptcy Court for advisory  
16 fees and costs pursuant to the provisions of the Bankruptcy Code, which authorizes applications for  
17 such interim compensation to be submitted once every one hundred and twenty (120) days, or more  
18 frequently if authorized by the Bankruptcy Court.

19 a. Hourly Rates. The Debtor has agreed that BEBLLC, subject to the approval  
20 of the Bankruptcy Court, shall be employed on an hourly basis, with compensation for services and  
21 reimbursement of expenses to be paid pursuant to Sections 328, 330, 331, 503, and 507 of the  
22 Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the  
23 United States Bankruptcy Court for the Northern District of California, and the Bankruptcy Court’s  
24 Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees  
25 promulgated by the United States Bankruptcy Court for the Northern District of California  
26 (“Guidelines”). BEBLLC’s fees will be billed in minimum increments of one-tenth (1/10th) of an  
27 hour pursuant to the Guidelines.

28 The current hourly rates of the BEBLLC professionals are as follows:

|                 |               |
|-----------------|---------------|
| Principals      | \$350         |
| Directors       | \$275 - \$325 |
| Associates      | \$175 - \$225 |
| Staff and Admin | \$75 - \$125  |

b. Expenses. The Debtor has also agreed that BEBLLC shall be reimbursed for its expenses incurred in connection with this case. All costs and expenses will be charged at BEBLLC's actual cost.

c. Security Retainer. The Debtor has paid BEBLLC a security retainer (i.e., a retainer held as security for payment of fees for future services to be rendered by BEBLLC in the Chapter 11 case) of \$175,000 (the "Chapter 11 Security Retainer") for its representation of the Company in the Chapter 11 case. The Debtor has granted to BEBLLC a security interest in the Chapter 11 Security Retainer. With possession of these funds, and pursuant to Section 9313 of the California Commercial Code, BEBLLC holds a valid, perfected and senior security interest in the Chapter 11 Security Retainer. The Chapter 11 Security Retainer shall be deemed a client trust fund to be held in BEBLLC's client trust account subject to a repayment obligation if not fully earned. BEBLLC will not draw down against the Chapter 11 Security Retainer except as authorized by the Court.

d. Payments. In the year prior to the commencement of the case, BEBLLC received the following payments from the Debtor:

| PAYMENT DATE      | AMOUNT           |
|-------------------|------------------|
| February 22, 2011 | \$14,910         |
| March 16, 2011    | \$15,120         |
| April 4, 2011     | \$18,445         |
| April 22, 2011    | \$33,075         |
| May 26, 2011      | \$50,085         |
| June 17, 2011     | \$64,295         |
| July 11, 2011     | \$68,355         |
| July 25, 2011     | \$76,125         |
| August 10, 2011   | \$58,660         |
| August 18, 2011   | \$62,125         |
| August 18, 2011   | <u>\$160,000</u> |
| <b>TOTAL</b>      | <b>\$621,195</b> |

9. Other than as set forth above, there is no proposed arrangement between the Debtor and BEBLLC for compensation to be paid in this case, and no agreement exists for the sharing of

1 compensation awarded by the Bankruptcy Court, except that such compensation will be shared  
2 among the members and employees of BEBLLC.

3 10. The Debtor furthermore agrees to the material terms, as set forth in the Engagement  
4 Agreement, which may be summarized as follows:

5 a. Prior to the Petition Date, the Company shall indemnify and hold harmless  
6 BEBLLC and its personnel from and against any claims, liabilities, costs and expenses (including  
7 without limitation, attorneys' fees and the time of BEBLLC's personnel involved) brought against,  
8 paid or incurred by BEBLLC at any time and directly arising out of or relating to BEBLLC's  
9 services under the Engagement Agreement, except to the extent finally determined to have resulted  
10 from the gross negligence or willful misconduct of BEBLLC's personnel. This provision survives  
11 the termination of the Engagement Agreement for any reason.

12 b. If any legal action, arbitration or proceeding is initiated concerning the terms  
13 and provisions of the Engagement Agreement, the prevailing party shall be entitled to reasonable  
14 attorneys' fees and other costs incurred in such action, arbitration or proceeding. Notwithstanding  
15 the foregoing, the Bankruptcy Court shall have exclusive jurisdiction over all such actions or  
16 proceedings.

17 c. The Company may discharge BEBLLC at any time. BEBLLC may withdraw  
18 from its engagement at any time. Upon discharge of, or withdrawal by, BEBLLC and termination of  
19 the Engagement Agreement, any balance of the Chapter 11 Security Retainer may be applied to all  
20 of BEBLLC's accrued but unpaid fees and costs subject to the Bankruptcy Court's approval and  
21 authorization. Any amount of the Chapter 11 Security Retainer remaining thereafter will be returned  
22 to the Company.

23 11. The Debtor requests that the employment of BEBLLC be effective as of the Petition  
24 Date.

25 **WHEREFORE**, the Debtor prays that this Bankruptcy Court enter its Order:

- 26 1. Approving the Application;  
27 2. Authorizing and approving the employment of BEBLLC effective as of the  
28 Petition Date, as the Debtor's financial advisor in aid of these proceedings, for the matters and upon

the terms and conditions set forth herein and in the Engagement Agreement; and

3. For such other and further relief as the Bankruptcy Court deems just and proper.

Dated: September 6, 2011

---

/s/ William J. Andronico

William J. Andronico  
Chief Executive Officer

**MURRAY & MURRAY**  
A Professional Corporation

*/s/ John Walshe Murray*

John Walshe Murray  
Attorneys for Debtor